

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

JAMES SPANN, Register No. 160792,)	
)	
Plaintiff,)	
)	
v.)	No. 06-4042-CV-C-NKL
)	
LARRY CRAWFORD, Director, et al.,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

Plaintiff James Spann, while confined in a Missouri penal institution, brought this case under the Civil Rights Act of 1871, 42 U.S.C. § 1983, and its corresponding jurisdictional statute, 28 U.S.C. § 1343. This case was referred to the undersigned United States Magistrate Judge for processing in accord with the Magistrate Act, 28 U.S.C. § 636, and L.R. 72.1.

On July 2, 2007, defendants filed a motion to dismiss plaintiff's claims for his failure to prosecute. On July 11, 2007, plaintiff was directed to respond to defendants' motion and provide why his claims should not be dismissed for failure to prosecute any why he should not be required to pay the costs associated with the first scheduled deposition for which he failed to appear. Plaintiff has filed no response. As stated in M.S. v. Wermers, 557 F.2d 170, 175 (8th Cir. 1977):

A district court has power to dismiss an action for failure of the plaintiff to comply with 'any order of court.' Fed. R. Civ. P. 41(b). Such action may be taken on the court's own motion, Welsh v. Automatic Poultry Feeder Co., 439 F.2d 95, 96 (8th Cir. 1971); see Stanley v. Continental Oil Co., 536 F.2d 914, 916-17 (10th Cir. 1976), and may be exercised under the court's inherent power to control its docket, Pond v. Braniff Airways, Inc., 453 F.2d 347, 349 (5th Cir. 1972); see also Link v. Wabash R.R. Co., 370 U.S. 626, 629-33 (1962), and to protect the integrity of its orders, Fendler v. Westgate-California Corp., 527 F.2d 1168, 1170 (9th Cir. 1975). See generally 15 A.L.R. Fed. 407 (1973).

Upon review, this court finds such motion to dismiss to have merit. On June 19, 2007, plaintiff failed to appear for his scheduled deposition, of which he had proper notice, and has provided the court no explanation for his nonappearance.

IT IS, THEREFORE, RECOMMENDED that defendants' motion to dismiss for failure to prosecute be granted and plaintiff's claims be dismissed. [121] It is further

RECOMMENDED that plaintiff be directed to reimburse defendants for the costs associated with such deposition in the amount of \$88.10 (see Doc. 121, Exh. 8, Invoice from Midwest Litigation Services).

Under 28 U.S.C. § 636(b)(1), the parties may make specific written exceptions to this recommendation within twenty days. The District Judge will consider only exceptions to the specific proposed findings and recommendations of this report. Exceptions should not include matters outside of the report and recommendation. Other matters should be addressed in a separate pleading for consideration by the Magistrate Judge.

The statute provides for exceptions to be filed within ten days of the service of the report and recommendation. The court has extended that time to twenty days, and thus, additional time to file exceptions will not be granted unless there are exceptional circumstances. Failure to make specific written exceptions to this report and recommendation will result in a waiver of the right to appeal. See L.R. 74.1(a)(2).

Dated this 13th day of August, 2007, at Jefferson City, Missouri.

/s/ William A. Knox

WILLIAM A. KNOX
United States Magistrate Judge